

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KENYON DARRELL BROWN,

Plaintiff,

v.

CDCR Director, et al.,

Defendants.

No. 1:21-cv-01186-JLT-SKO (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION FOR FAILURE TO EXHAUST**

(Doc. No. 19)

Plaintiff Kenyon Darrell Brown is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought under 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The assigned magistrate judge issued findings and recommendations, recommending that this action be dismissed for Plaintiff's failure to exhaust administrative remedies prior to filing suit as required by the Prison Litigation Reform Act. (Doc. No. 19.) Plaintiff filed objections thereto.

In his objections, Plaintiff does not dispute that he failed to exhaust his claim that a prison-wide modified program violates the Eighth Amendment, which he raised in his first amended complaint. (*See generally* Doc. No. 20.) Instead, he requests that the first amended complaint be dismissed, and that he be allowed to proceed on his original complaint. (*Id.* at 1.) However, in his original complaint, Plaintiff contends that prison officials unlawfully denied him

1 parole consideration under California Proposition 57. (*See* Doc. No. 1.) This is the same claim
2 raised in a separate, still-pending case, *Brown v. North Kern State Prison, et al.*, No. 1:20-cv-
3 01396 (Doc. No. 1; *see also* Doc. No. 32.) Thus, if the Court were to grant Plaintiff's request to
4 dismiss the first amended complaint and to proceed with the original complaint, this action should
5 still be dismissed as duplicative. *See Cato v. United States*, 70 F.3d 1103, 1105 (9th Cir. 1995).
6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de*
7 *novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's
8 objections, the Court finds the findings and recommendations to be supported by the record and
9 proper analysis. Accordingly, the Court ORDERS:

- 10 1. The findings and recommendations issued on December 1, 2021 (Doc. No. 19) are
11 ADOPTED in full;
- 12 2. This action is DISMISSED for failure to exhaust administrative remedies; and,
- 13 3. The Clerk of the Court is DIRECTED to terminate all pending motions and to
14 close this case.

15 IT IS SO ORDERED.

16 Dated: **January 18, 2022**

17 
UNITED STATES DISTRICT JUDGE